



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

**OFFICE OF THE
INSPECTOR GENERAL**

August 7, 2014

MEMORANDUM TO: Mark A. Satorius
Executive Director for Operations

FROM: Stephen D. Dingbaum */RA/*
Assistant Inspector General for Audits

SUBJECT: STATUS OF RECOMMENDATIONS: AUDIT OF NRC'S
IMPLEMENTATION OF 10 CFR PART 21, REPORTING OF
DEFECTS AND NONCOMPLIANCE (OIG-11-A-08)

REFERENCE: DIRECTOR, OFFICE OF NEW REACTORS,
MEMORANDUM DATED JUNE 20, 2014

Attached is the Office of the Inspector General's analysis and status of recommendations 1, 2, and 4, as discussed in the agency's response dated June 20, 2014. Based on OIG's analysis of this response, recommendations 1, 2, and 4 remain in resolved status. Recommendations 3 and 5 were previously closed. Please provide an update on the status of the resolved recommendations by January 20, 2015.

If you have questions or concerns, please call me at 415-5915, or RK Wild, Team Leader, at 415-5948.

Attachment: As stated

cc:
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Audit Report

AUDIT OF NRC'S IMPLEMENTATION OF 10 CFR PART 21, REPORTING OF DEFECTS AND NONCOMPLIANCE

OIG-11-A-08

Status of Recommendations

Recommendation 1: Revise 10 CFR Part 21 for full conformity with the *Energy Reorganization Act of 1974, As Amended, Section 206, Noncompliance*.

Agency Response
Dated June 20, 2014:

As previously noted, the U.S. Nuclear Regulatory Commission (NRC) staff revised and issued NUREG-1022, Revision 3, "Event Reporting Guidelines: 10 CFR 50.72 and 50.73," in a *Federal Register* notice published February 11, 2013. The staff removed the discussion related to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 21, "Reporting of Defects and Noncompliance." The NRC published Revision 3 of NUREG-1022 in January 2013, and it took effect July 1, 2013. In addition, the staff issued a Commissioners' Assistants (CA) note, "Clarification of Staff Position on Part 21 Reporting Requirements," dated September 19, 2011. The CA note communicated the staff's position to ensure full conformity with the *Energy Reorganization Act* (ERA).

The staff continues to make progress on its rulemaking efforts to clarify 10 CFR Part 21. The rulemaking will clarify the 10 CFR Part 21 language and should prevent interpretations that could potentially allow less than full conformity with Section 206 of the ERA. The staff's progress includes working with the nuclear industry to develop guidance documents that will potentially be endorsed through two corresponding regulatory guides. The staff has coordinated with the Office of Nuclear Regulatory Research to create two draft guides: Draft Regulatory Guide (DG) DG-1291, "Evaluating Deviations and Reporting Defects and Noncompliance," and DG-1292, "Dedication of Commercial Grade Items."

Audit Report

AUDIT OF NRC'S IMPLEMENTATION OF 10 CFR PART 21, REPORTING OF DEFECTS AND NONCOMPLIANCE

OIG-11-A-08

Status of Recommendations

Recommendation 1 (cont.):

Regarding development of DG-1291, the Nuclear Energy Institute (NEI) agreed to author a guidance document on the evaluation and reporting process during a May 30, 2013, public meeting. On April 23, 2014, the staff met with the NEI working group that is developing the industry guidance on evaluating and reporting. NEI plans to complete a first draft of the guide in the summer of 2014. The meeting provided the staff with insights into the industry understanding of the current process and ways to improve its clarity. Based on the discussions, the staff initiated additional changes to its working copy of Revision 1 to the draft regulatory basis to provide additional clarity. Pending successful internal concurrence, the staff is targeting public release of the draft regulatory basis by the end of June 2014. Based on these revised dates, the staff does not anticipate an impact to the overall target for issuance of the proposed and final rules.

The table below lists the staff's updated schedule. The latest schedule reflects a targeted issuance of Revision 1 to the draft regulatory basis in June 2014. The corresponding projected dates for the proposed and final rules are still September 2015 and December 2016, respectively.

Milestones	Target Date
Conduct Internal Collaboration on Draft Regulatory Basis	Ongoing
Make Final NMSS Site Visit to Fuels Facilities (COMPLETE)	September 27, 2013
Hold NMSS Public Meeting to Discuss Potential Solutions to Policy Issues (COMPLETE)	March 6, 2014
Begin Concurrence of Revision 1 to the Draft Regulatory Basis (COMPLETE)	March 31, 2014
Release Revision 1 to the Draft Regulatory Basis	June 2014
Hold Public Meetings to Discuss Regulatory Basis	Summer 2014
Finalize Regulatory Basis	September 2014
Issue Proposed Rule with Draft Guides	September 2015
Issue Final Rule	December 2016

Audit Report

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Status of Recommendations

Recommendation 1 (cont.):

Target Completion Date: Finalize the regulatory basis in September 2014.

OIG Analysis:

On the basis of the agency's response and discussions with agency staff, OIG agrees with the agency's proposed actions. OIG notes that staff has clarified that the draft regulatory basis has been completed and is currently under review by the Office of the General Counsel. Agency staff will provide revised milestones to OIG in future audit follow-up submissions.

This recommendation will be closed upon completion and OIG review of the relevant, completed staff actions per the schedule provided above.

Status:

Resolved.

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Status of Recommendations

Recommendation 2: Expedite publication of interim guidance that specifies requirements for Part 21 reporting in accordance with the *Energy Reorganization Act of 1974, as amended, Section 206, Noncompliance.*

Agency Response

Dated June 20, 2014:

As noted above, the staff has been working with stakeholders to develop guidance that can potentially be endorsed through regulatory guides. DG-1291 may endorse NEI's guidance on evaluation and reporting, which would provide more extensive guidance than previously available. The staff's next major milestone will be to finalize the regulatory basis. The staff will undertake regulatory guidance development in parallel with the development of the proposed rule. This effort will begin following issuance of the regulatory basis.

Target Completion Date: Finalize the regulatory basis in September 2014.

OIG Analysis:

OIG notes that publication of revised and updated Part 21 guidance remains contingent upon completion of Draft Regulatory Guide (DG) DG-1291, "Evaluating Deviations and Reporting Defects and Noncompliance," currently in draft and under review by OGC. OIG concurs with agency actions based on the agency's response of June 20, 2014, and discussion with agency staff. Agency staff will continue to provide updates and milestone dates per their previous response. This recommendation will be closed upon staff completion and OIG review of interim guidance that specifies Part 21 reporting requirements.

Status:

Resolved.

Audit Report

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Status of Recommendations

Recommendation 4: Review, revise as applicable, and reissue NUREG-0302, *Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to Discuss Regulations (10 CFR Part 21) for Reporting of Defects and Noncompliance*, July 12 – 26, 1977.

Agency Response

Dated June 20, 2014:

Along with the efforts noted above, the staff is planning extensive stakeholder communication for the rollout of the clarified rule and guidance documents to clarify 10 CFR Part 21. The staff continues to make presentations on Part 21. Through the documents associated with the rulemaking, the staff continues to communicate its expectations for Part 21 compliance. The plan is to update and re-issue NUREG-0302 when the revised Part 21 is issued. As noted above, the next milestone in the rulemaking effort is to finalize the regulatory basis.

Target Completion Date: Finalize the regulatory basis in September 2014.

OIG Analysis:

The agency's proposed action continues to meet the intent of the recommendation. Given the extended targeted dates for completion of the Part 21 rulemaking, OIG encourages staff to continue to provide updated steps and dates regarding the agency's plan towards the reissuance of NUREG-0302. This recommendation will be closed upon completion and OIG review of the revisions to NUREG-0302.

Status:

Resolved.